

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

HENRY LEE GIVENS,

Plaintiff,

v.

JUDGE ALFONSO CHARLES,

Defendant.

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Case No. 6:20-CV-101-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Henry Lee Givens, an inmate proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On February 26, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 5) recommending that Plaintiff's action be dismissed as frivolous and for failure to state a claim upon which relief may be granted. *Id.* at 3. Plaintiff filed objections on March 18, 2020. Docket No. 6.

The Court overrules Plaintiff's objections. Plaintiff argues that Defendant is not entitled to judicial immunity because, "[b]y violating Art. 30.01 of the Texas Code of Criminal Procedure [h]e did knowingly and willing[ly] step outside his Judicial capacity and violated my civil rights." *Id.* at 1. However, "[judicial] immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991). Plaintiff does not explain how Defendant "being the sitting judge to pick the judge to preside over [his]


Motion Hearing to Recuse” fits in either of those circumstances. Docket No. 1 at 4. Plaintiff’s claims therefore fail.

Having made a *de novo* review of the objections raised by Plaintiff to the Magistrate Judge’s Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff’s objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 5) be **ADOPTED**. It is further

ORDERED that Plaintiff’s civil rights lawsuit is **DISMISSED WITH PREJUDICE** as both frivolous and for the failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915.

So **ORDERED** and **SIGNED** this **3rd** day of **April, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE